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OFFICE OF
COUNSEL



Robert S. Graham
Chairman

January 17, 2014

Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR # 6777

Re: Ann Kirkpatrick, Kirkpatrick for Arizona and House Majority PAC

Dear Mr. Herman:

Pursuant to 2 USC § 437g(a)(1) and 11 CFR § 111.4, please accept this letter as a Complaint against the House Majority PAC ("HMPAC") for operating in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("FEC" or "Commission") regulations, and more specifically, for violation of the regulations governing dissemination, distribution, or republication of candidate campaign materials, located at 11 CFR § 109.23.

I. Facts

Ann Kirkpatrick is a candidate for U.S. Representative for Arizona's 1st Congressional District, running for election in 2014 ("Kirkpatrick"). Kirkpatrick filed an amended Statement of Candidacy on May 8, 2013. Kirkpatrick for Arizona is the authorized principal campaign committee for Ann Kirkpatrick ("the Campaign"), and filed an amended Statement of Organization on May 8, 2013.

House Majority PAC ("HMPAC") is an independent expenditure-only committee that also makes independent expenditures on behalf of Federal candidates.

On June 26, 2012, the Campaign released a youtube video with campaign video footage depicting Kirkpatrick visiting with various people in different environments ("Campaign Video

Arizona Republican Party, 3501 N. 24th Street, Phoenix, AZ 85016 (602) 957-7770 FAX: (602) 224-0932 www.azgop.org

Paid for by the Arizona Republican Party. Not authorized by any candidate or candidate committee.

Footage"). On January 16, 2014, HMPAC began airing an advertisement in support of Ann Kirkpatrick ("HMPAC Advertisement") on broadcast television. The disclaimer on the HMPAC Advertisement reads "Paid for by the House Majority PAC. TheHouseMajorityPAC.com Not authorized by any candidate or candidate's committee. House Majority PAC is responsible for the content of this advertising." See Attachment 1 for a transcript of the HMPAC Advertisement.

The HMPAC Advertisement includes the exact same footage that was created and produced by the Campaign, and included in the Campaign Video Footage. For instance:

- At :04 seconds, the HMPAC Advertisement shows a ranch scene, with Kirkpatrick walking and having a conversation with two male ranchers wearing cowboy hats, then moves to a shot at a wire fence in which Kirkpatrick is talking the rancher wearing a plaid shirt and cowboy hat. At :30, the Campaign Video Footage shows the exact same footage, panning to the same ranch shot with the two male ranchers, followed by the shot at the wire fence with the single rancher.
- At :08 seconds, the HMPAC Advertisement shows Kirkpatrick standing next to a roadway with a view of a mountain range and speaking to a group of gentlemen, one of which is a law enforcement officer. At 2:32, the Campaign Video Footage shows the same footage of Kirkpatrick speaking to the same gentlemen.
- At :13 seconds, the HMPAC Advertisement shows Kirkpatrick sitting at a picnic table in a park having a discussion with a group of senior citizens. At 1:00, the Campaign Video Footage shows the same footage of Kirkpatrick having a conversation with the senior citizens at the picnic table.
- At :22 seconds, the HMPAC Advertisement shows Kirkpatrick walking alongside the mountain-view roadway described above and speaking to a group of four gentlemen, two of which are law enforcement officers. At 2:37 seconds, the Campaign Video Footage shows the same scene of Kirkpatrick walking while talking to the gentlemen.
- At :25 seconds, the HMPAC Advertisement shows Kirkpatrick sitting on a haystack talking with a little girl in a tank top. At :41 seconds, the Campaign Video Footage shows the same scene of Kirkpatrick and the little girl talking on the haystacks.

Relevant Law

Committees that solicit and accept unlimited contributions from individuals, political committees, corporations and labor organizations for the purpose of making independent expenditures are prohibited from making direct contributions to federal political committees. *See Citizens United v. Federal Election Commission*, 130 S. Ct. 876, 901 (2010)(noting that *Buckley v. Valeo*, 424 U.S. 1 (1976) first upheld the FECA's limits on direct contributions to candidates to protect against the government interest in the prevention of corruption and the appearance of corruption"). *See also* FEC Advisory Opinion 2010-11 (approving an organization's proposal to

solicit non-federal funds in order to make independent expenditures, as long as the organization refrained from making "any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization").

The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or graphic materials prepared by the candidate, the candidate's authorized committee, or an agent of either shall be considered a contribution for purposes of contribution limitations and reporting responsibilities of the person making the expenditure. 11 CFR § 109.23. There are exceptions to this rule, but none are applicable in the situation at hand.¹ In-kind contributions, like other contributions, are subject to federal contribution limits.

Legal Analysis

The cost of creating the HMPAC Advertisement is, by law, classified as an in-kind contribution to the Campaign. HMPAC distributed an advertisement that republished materials prepared by Kirkpatrick and the Campaign and included in campaign video footage published online not two months earlier. Because none of the exceptions to the definition of a contribution apply in the matter at hand, the cost of conceptualizing, producing, and broadcasting this advertisement is considered an in-kind contribution from HMPAC to the Campaign.

HMPAC is prohibited from making direct or in-kind contributions to federal campaign committees. Furthermore, Kirkpatrick and the Campaign are prohibited from receiving funds unless the funds are subject to the limitations, prohibitions and reporting requirements. The cost of the HMPAC Advertisement is an illegal contribution to Kirkpatrick and the Campaign.

IV. Conclusion

Upon information and belief, and based upon the facts relayed herein, the House Majority PAC have violated the Federal Election Campaign Act of 1971, as amended, and Federal Election Commission Regulations. Accordingly, we respectfully request that the Commission conduct an immediate investigation into the violations outlined above and impose the maximum penalty under law.

The foregoing is correct and accurate to the best of my knowledge, information and belief.

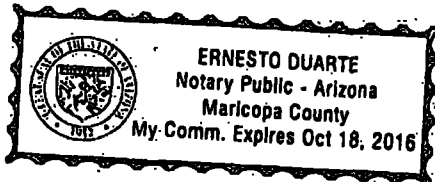
¹ See 11 CFR §109.23(b), granting exceptions from the definition of contribution for republication by the candidate or candidate's authorized committee who prepared the material, for campaign material incorporated into a communication that advocates the defeat of the candidate that prepared the material, for republication in a news story, editorial, or commentary, for republication of a "brief quote of materials that demonstrate a candidate's position", or for republication paid for with coordinated party expenditure authority." Clearly none of the exceptions explained herein apply in this case.

Respectfully submitted,



Chad Heywood
Executive Director

Sworn to and subscribed before me this 17th day of January, 2014.


Notary Public

My Commission Expires:

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